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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,311	11/09/2001	Natasha V. Raikhel	MSU 4.1-633	4340
21036	7590	12/17/2003	EXAMINER	
MCLEOD & MOYNE, P.C. 2190 COMMONS PARKWAY OKEMOS, MI 48864			KUBELIK, ANNE R	
			ART UNIT	PAPER NUMBER
			1638	

DATE MAILED: 12/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/037,311	RAIKHEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anne R. Kubelik	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 September 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3 and 4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1, 3-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
  - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. Claims 1 and 3-4 are pending.
2. The amendment filed 12 May 2003 remains objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The amendment to the paragraph starting on pg 12, line 10 is objected to for inclusion of the sentence “Anti-ATFT1 polyclonal ... but not pea.”

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. The rejections of claim 1 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a nucleic acid encoding SEQ ID NO:1, does not reasonably provide enablement for nucleic acids encoding any plant fucosyltransferase, under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement, and under 35 U.S.C. 102(b) as being anticipated by Newman et al (1994, GenBank Accession No. R90192) are withdrawn in light of Applicant’s amendment of the claim.

### ***Claim Objections***

5. Claims 1 and 3 are objected to because of the following informalities:  
Claim 1 lacks an article before “fucosyl” in line 2.

In claim 3, line 5, there is an improper article before “plant”.

***Claim Rejections - 35 USC § 112***

6. Claim 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicant regards as the invention. Dependent claims are included in all rejections.

Claim 4 lacks antecedent basis for the limitation “the plant cell of claim 3” as claim 3 is drawn to a method.

***Claim Rejections - 35 USC § 102***

7. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Rounsley et al (1998, EMBL Accession No. T02704). The rejection is repeated for the reasons of record as set forth in the Office action mailed 31 July 2003. Applicant’s arguments filed 2 September 2003 have been fully considered but they are not persuasive.

Applicant urges that the rejection is overcome by amendment (response pg 8).

This is not found persuasive because Rounsley et al teach a nucleic acid from *Arabidopsis* that encodes a protein with 100% identity to SEQ ID NO:1.

8. Claims 3-4 are free of the prior art, given the failure of the prior art to teach or suggest the transformation of a plant with a gene encoding a xyloglucan fucosyltransferase of SEQ ID NO:1.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (703) 308-5059. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 308-0198.

Anne R. Kubelik, Ph.D.  
December 8, 2003



ASHWIN D. MEHTA, PH.D  
PATENT EXAMINER